

1 AN ACT relating to decommissioning costs for electric generating units.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 278.264 is amended to read as follows:

4 (1) Notwithstanding any provision of law to the contrary, the commission shall have
5 the authority to approve or deny the retirement of an electric generating unit owned
6 by a utility. Prior to retiring an electric generating unit, a utility shall apply to the
7 commission for an order approving the retirement, and shall give the commission
8 thirty (30) days' notice of the application. The application shall include a statement
9 certifying the applicant's compliance with the requirements of KRS 164.2807. The
10 commission shall enter an order approving, approving with conditions, or denying
11 the application within one hundred eighty (180) days of receiving an
12 administratively complete application.

13 (2) There shall be a rebuttable presumption against the retirement of a fossil fuel-fired
14 electric generating unit. **Subject to the provisions of subsection (6) of this section,**
15 the commission shall not approve the retirement of an electric generating unit,
16 authorize a surcharge for the decommissioning of the unit, or take any other action
17 which authorizes or allows for the recovery of costs for the retirement of an electric
18 generating unit, including any stranded asset recovery, unless the presumption
19 created by this section is rebutted by evidence sufficient for the commission to find
20 that:

21 (a) The utility will replace the retired electric generating unit with new electric
22 generating capacity that:

23 1. Is dispatchable by either the utility or the regional transmission
24 organization or independent system operator responsible for balancing
25 load within the utility's service area;

26 2. Maintains or improves the reliability and resilience of the electric
27 transmission grid;

- 1 3. Maintains the minimum reserve capacity requirement established by the
2 utility's reliability coordinator; and
- 3 4. Has the same or higher capacity value and net capability, unless the
4 utility can demonstrate that such capacity value and net capability is not
5 necessary to provide reliable service;
- 6 (b) The retirement will not harm the utility's ratepayers by causing the utility to
7 incur any net incremental costs to be recovered from ratepayers that could be
8 avoided by continuing to operate the electric generating unit proposed for
9 retirement in compliance with applicable law;
- 10 (c) The decision to retire the fossil fuel-fired electric generating unit is not the
11 result of any financial incentives or benefits offered by any federal agency;
12 and
- 13 (d) The utility shall not commence retirement or decommissioning of the electric
14 generating unit until the replacement generating capacity meeting the
15 requirements of paragraph (a) of this subsection is fully constructed,
16 permitted, and in operation, unless the utility can demonstrate that it is
17 necessary under the circumstances to commence retirement or
18 decommissioning of the existing unit earlier.
- 19 (3) The utility shall at a minimum provide the commission with evidence of all known
20 direct and indirect costs of retiring the electric generating unit, **as well as all costs**
21 **and depreciation expenses recovered pursuant to subsection (6) of this section,**
22 and demonstrate that cost savings will result to customers as a result of the
23 retirement of the electric generating unit.
- 24 (4) The commission shall prepare and submit an annual report to the Legislative
25 Research Commission by December 1 of each year detailing:
- 26 (a) The number of requests by utilities to retire electric generating units in the
27 Commonwealth, the nameplate capacity of each of those units, and whether

1 the request was approved or denied by the commission;

2 (b) The impact of any commission-approved retirement of an electric generating
3 unit on the:

- 4 1. Commonwealth's generation fuel mix;
- 5 2. Required capacity reserve margins for the utility;
- 6 3. Need for capacity additions or expansions at new or existing facilities as
7 a result of the retirement; and
- 8 4. Need for additional purchase power or capacity reserve arrangements;
9 and

10 (c) Whether the retirement resulted in stranded costs for the ratepayer that will be
11 recovered by the utility through a surcharge or some other separate charge on
12 the customer bill.

13 (5) As used in this section:

14 (a) "Dispatchable" means a source of electric power generation that is available
15 on demand, that is not intermittent, and that can be adjusted to increase or
16 decrease its power output upon request of a power grid operator or otherwise
17 upon demand or request, or that can have its power output adjusted in
18 response to market or system needs; and

19 (b) "Intermittent" means:

- 20 1. A source of electric power generation from a solar photovoltaic, solar
21 thermal heating, concentrating solar thermal collector, or other solar
22 energy collection or generation system;
- 23 2. A source of electric power that generates energy by harnessing wind
24 power or energy, whether through a turbine or other device;
- 25 3. Geothermal energy, biomass energy, anaerobic digestion, or combined
26 heat and power from solar, wind, geothermal, or anaerobic digestion
27 sources;

- 1 4. Any short duration energy storage, which includes any method of
2 storing generated electricity for later dispatch to the grid, whether alone
3 or in conjunction with any other intermittent sources described in this
4 paragraph, that is equivalent to less than forty-eight (48) hours of the
5 average peak generation of the unit it is used to offset; or
- 6 5. Conventional hydropower and pumped storage hydropower, unless they
7 are capable of providing energy on demand, in which case they shall be
8 deemed to be dispatchable.

9 **(6) (a) Notwithstanding any provision of law to the contrary, this section shall not**
10 **be construed as limiting the commission's authority to approve a utility's**
11 **right to record and seek, prior to retirement authorization, the recovery of**
12 **any electric generating unit's decommissioning, removal and salvage costs,**
13 **and depreciation expenses through rates over the electric generating unit's**
14 **estimated depreciable life.**

15 **(b) Approval to recover any costs or expenses under this subsection shall not be**
16 **considered approval of, or support for, retirement or approval of timing of**
17 **retirement of an electric generating unit in any proceeding considering a**
18 **retirement application filed pursuant to subsection (1) of this section.**